FILE COPY.

JAN 14 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

~~October Term, 1906.~~

~~No. 12, Original.~~ No. 4 Orig.

O. T. 1907

THE UNITED STATES OF AMERICA

vs.

JOHN F. SHIPP ET AL.

MOTION FOR THE SUMMONING OF WITNESSES FOR DEFENDANT WILLIAM MARQUETTE AT THE EXPENSE OF THE GOVERNMENT.

JOE V. WILLIAMS,
Attorney for Defendant William Marquette.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24802

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendant, William Marquette, moves the court by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavit of said Marquette, herewith filed and made a part hereof, that the witnesses whose names are set forth in said affidavit, and who are residents of the southern division of the eastern district of Tennessee, to-wit, Dr. M. L. Crum, Dr. E. C. Johnson, Dr. Cooper Holtzclaw, L. B. Coleman, W. D. Bowers, H. M. Allen, Charles Karston, Robert S. Mastin, F. A. Frawley, J. G. Richardson, and H. D. Rider, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing of testimony in this cause, and that it be ordered by the court that the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States, or that in lieu of this that the court, if it deems the same expedient, direct that the testimony to be taken in this cause be taken by a commissioner duly appointed and to sit in the southern division of the eastern district of Tennessee.

JOE V. WILLIAMS,
Attorney for Defendant.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared William Marquette, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, namely, Dr. M. L. Crum, Dr. E. C. Johnson, Dr. Cooper Holtzclaw, L. B. Coleman, W. D. Bowers, H. M. Allen, Charles Karston, Robert S. Mastin, F. A. Frawley, J. G. Richardson, and H. D. Rider; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the night of March 19, 1906, he was at the office of Dr. Cooper Holtzclaw and at other places at and during the time said Ed Johnson was hanged on said date; that he was not on said night at or near the county jail or at or near the place where the said Ed Johnson was hanged, and that he had no connection whatever therewith.

All the said witnesses are residents of Chattanooga, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

WILLIAM MARQUET.

Sworn and subscribed to before me this 11th day of January, 1907.

[SEAL.]

CHAS. WATSON,
Notary Public.

FILE COPY.

JAN 14 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

~~October Term, 1906.~~

~~No. 13, Original.~~

No. 5 Orig.
O.T. 1907

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

MOTION FOR THE SUMMONING OF WITNESSES FOR CERTAIN DEFENDANTS AT THE EXPENSE OF THE GOVERNMENT.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
ROBERT B. COOKE,
Attorneys for Sheriff Shipp and His Deputies.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24800

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendants Frank Jones, Mat L. Galloway, C. A. Baker, Thomas B. Taylor, George W. Brown, Jeremiah Gibson, Fred Frawley, Marion Perkins, and Joseph C. Clark, move the honorable court by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavits herewith filed, and numbered from 1 to 9, inclusive, that the witnesses whose names are here set forth in said affidavits, and who are residents of the southern division of the eastern district of Tennessee, viz., S. W. Ault, Jack Tipton, R. S. Brown, W. H. Hartman, Mrs. Nina Hartman, Jeremiah Gibson, Mrs. Ella Taylor, George E. Coster, Dr. A. W. Palmer, Joe Hodges, J. H. Jeanatt, J. Y. McDaniels, Col. T. E. Patterson, W. T. Hayes, Oscar Yarnell, Sherman Beck, George Gahagan, L. G. Frawley, N. I. Schwartz, W. E. Stage, Jeremiah Gibson, George D. Rogers, L. B. Hatcher, and others, whose names are not known at present, but will be furnished, if necessary; W. A. Clark, T. A. Clark, Gilbert Snyder, Boyd Dickson, Mrs. Mary E. Clark and Phama Clark, N. I. Schwartz, W. E. Stage, George D. Rogers, L. B. Hatcher, Fred A. Frawley, Charles Baker, James Elliott, Frank Wallace, George Kirklin, Joe Shipp, Jr., Thomas Sholes, Kid Harkins, George Gahagan, George Lebeau, James Elliott, John Sleay, I. N. Schwartz, and William Viox, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing the testimony in this cause, and that it be ordered by the court that

the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States, in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States, or, in lieu of this that the court, if it deems the same expedient, direct that the testimony be taken in this cause by a commissioner duly appointed and to sit at Chattanooga or some other designated point in the southern division of the eastern district of Tennessee.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
ROBERT B. COOKE,
Attorneys for Sheriff Shipp and His Deputies.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared George W. Brown, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses are material to his defense, viz., S. W. Ault, Jack Tipton, R. S. Brown, W. H. Hartman, Mrs. Nina Hartman, and Jeremiah Gibson; that he cannot go safely to trial without them or their testimony; that he expects to prove by said witnesses that on the evening of the night of March the 19th, 1906, about fifteen minutes after six o'clock, he, with his wife, left the county jail of Hamil-

ton county, Tennessee, to go over into Hill City, to take supper with his father, attend church in Hill City that night, as his children were at his father's, having gone over about one o'clock in the afternoon; that he remained at his father's all night, and was not in the city of Chattanooga or at the county jail during the night, or until about six o'clock the next morning, and knew nothing of the alleged mobbing of Ed Johnson until after he had left his father's, on his way to the county jail, after boarding the car coming into the city, and that he was not at or near the county jail or the place where said Ed Johnson was lynched or hanged; that he had no idea or information that such lynching would take place at that time.

All of said witnesses are residents of Hamilton county, Tennessee, in the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

GEO. W. BROWN.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.]

J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Thomas B. Taylor, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses, Ella Taylor, George E. Coster, Dr. A. W. Palmer, Joe Hodges, J. H. Jeanatt, J. Y. McDaniels, Col. T. E. Patterson, W. T. Hayes, Oscar Yarnell, Geo. Gahagan, and Sherman Beck, are material witnesses in his defense; that he cannot go safely to trial without them or their testimony; that he expects to prove by said witnesses that on the night of March 19, 1906, his whereabouts, during the night; first, that at the time the alleged lynching of Ed Johnson is said to have taken place he was in Hill City attending an Odd Fellows' entertainment; that he remained there until about fifteen minutes after ten o'clock, when he took the ten-fifteen car for home, reaching home about eleven-fifteen; that he had nothing in the world to do with the lynching of Ed Johnson and no knowledge that it was likely to take place, and hopes to be able to prove other facts by these witnesses important to his defense, and that he has nothing to do with the sheriff's office or the serving of process or things of that sort, as he is simply appointed as engineer in charge of the power plant.

All of said witnesses are residents of Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he

prays the court to order them to be subpœnaed and direct that the costs incurred by the process and the fees of the witness shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

T. B. TAYLOR.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Fred A. Frawley, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, L. G. Frawley, N. I. Schwartz, W. E. Stage, Jeremiah Gibson, George D. Rogers, L. B. Hatcher, and others, are material witnesses for his defense, and that he cannot go to trial safely without their testimony; that he expects to prove by said witnesses that on the evening of the night and the night of March the 19th, 1906, he was not at the county jail of Hamilton county at the time the alleged mob is said to have visited said jail and executed Ed Johnson; that he knew nothing of the organization of the mob or that it was anticipated that there would be a mob on that night; that he expects to prove his whereabouts at

the time the lynching is said to have occurred, and that he was not at the jail nor with the mob.

All of said witnesses are residents of Chattanooga, Tennessee, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in cases of witnesses subpœnaed in behalf of the United States.

F. A. FRAWLEY.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Joseph C. Clark, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, W. A. Clark, T. A. Clark, Gilbert Snyder, Boyd Dickson, Mrs. Mary E. Clark, and Phama Clark, are material witnesses for defense, and that he cannot go safely to trial without their testimony; that he expects to prove by said witnesses that on the evening and

the night of March the 19th, 1906, he was not at the county jail of Hamilton county; was not with the alleged mob; knew nothing of the same until after the lynching is said to have taken place; that he in no way participated therein or had any knowledge of the existence of said mob until after the alleged lynching is said to have taken place; that he was not the deputy sheriff at that time.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

JOSEPH C. CLARK.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Mat L. Galloway, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, N. I. Schwartz, W. E. Stage, George D. Rogers, L. B. Hatcher, Fred A. Frawley, Charles

Baker, Marion Perkins, James Elliott, and others, whose names are not at present known, are material witnesses in behalf of defendants, and that he cannot go safely to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March the 19th, 1906; that he was not at the county jail of Hamilton county, or with the alleged mob, and knew nothing of a mob being organized or of its acts until after they had broken into the jail and removed prisoner Ed Johnson therefrom, when he first heard of the existence of the mob, and that he had nothing to do with the same and in no way participated with it and was entirely ignorant of its existence until informed as above stated.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

MATT. L. GALLOWAY.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Marion Perkins, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, Frank Wallace, George Kirklin, Joe Shipp, Jr., Thomas Sholes, Kid Harkin, George Gahagan, and others, whose names are not at present known to him, are material witnesses in his behalf on the trial of this cause, and that he cannot safely go to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March the 19th, 1906, prior and up until after the lynching of said Ed Johnson; that he was not at the county jail of Hamilton county or with said alleged mob; knew nothing of its being organized or of its acts until after they had broken into the jail and removed the prisoner, Ed Johnson, therefrom; that he had in his charge a prisoner whose name was —— —— (at present unable to recall the name), whom he carried before a justice of the peace for Hamilton county in the early part of the night of the 19th of March, 1906, where he was tried and committed to the county jail; that when he arrived at the county jail he found out for the first time that the jail had been broken open and the prisoner, Ed Johnson, removed therefrom, and that he had nothing to do with said mob and no idea that the mob would be organized that night and is in no way guilty of the charges specified in the information in this case.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

MARION PERKINS.

Sworn to and subscribed before me this 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Charles A. Baker, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, George Lebeau, James Elliott, John Sleay, and I. N. Schwartz, William Viox and others, whose names are not known at present, are material witnesses in his behalf on the trial of this cause, and that he cannot safely go to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March 19, 1906, prior to and up

until after the lynching of said Ed Johnson; that he was not at the county jail of Hamilton county, or with said alleged mob, and knew nothing of its organization or that it was expected or anticipated that a mob would be organized on that night, until, as he was informed, after the same had broken into and removed said Ed Johnson therefrom; that he had heard of no rumor or threats of mobbing the said Johnson, or any one else on that night, and was not at the jail at the time the mob was there, and knew nothing of it, as before stated, until after it had executed its purpose.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

C. A. BAKER.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.]

J. E. STRECKER,
Notary Public.

FILE COPY.

JAN 17 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. 5 Orig
O. T. 1907

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

BRIEF FOR JOSEPH F. SHIPP ET AL. ON MOTIONS FOR ORDERS OF ARREST AND FOR TAKING TESTIMONY.

JUDSON HARMON,
Counsel for Joseph F. Shipp et al.

CLIFT AND COOKE,
ROBERT PRITCHARD,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24843

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 12, Original.

THE UNITED STATES OF AMERICA

vs.

JOHN F. SHIPP ET AL.

BRIEF FOR JOSEPH F. SHIPP ET AL. ON MOTIONS FOR ORDERS OF ARREST AND FOR TAKING TESTIMONY.

MOTION FOR ARREST, &c.

The only object of issuing attachments is to bring before the court the parties charged with contempt so that they may be heard, if defense they have (Rapalje on Contempts, sec. 100).

This course is discretionary with the court when there is any other mode of procedure open. The usual practice is by a rule to show cause (*id.*, secs. 9, 103; U. S. *vs.* Anonymous, 21 Fed., 761).

The Government did not ask for attachments in the information, but very properly followed the usual practice, praying only for the issuance and service of "a rule to show cause,

if any there be, on a day certain, why said defendants and each of them should not be punished as and for a contempt of this honorable court" (Inf., p. 10).

According to some authorities the personal appearance of the parties might have been required (Rapalje on Contempts, sec. 109). But the Government acquiesced in their appearance by counsel and by answers personally signed and verified.

The preliminary matters set up in those answers have been held insufficient cause, and the proceeding now stands as to each defendant on his denial, under positive oath, of the offense charged. This is surely sufficient cause as against an information verified only on information and belief (Inf., p. 11) until the Government produces proof. We submit that the production of that proof is now the only course open to it.

The Government has waived its right to an interlocutory attachment, if it had such right. It has waived the personal attendance of the defendants in answer to the rule. Now, as against their sworn denials, it asks, merely on its naked information, that the defendants be arrested and committed in default of bail. There is no attempt to show any facts to justify a different course from that taken in the prayer of the information.

We submit that to grant this motion would subject the defendants to hardship and indignity which the state of the record does not justify and which would violate the presumption of innocence this court has so strongly upheld.

As to Joseph F. Shipp, sheriff, and his deputies, all this has peculiar force. They are officers of justice of the State of Tennessee. Their time is required in the service of the courts and the preservation of the peace in that State. Courtesy to the State and the tribunals they serve makes regard for the presumption of their innocence highly appropriate as well as just.

MOTION TO TAKE TESTIMONY.

We consent, of course, to the taking of testimony. We consent, too, for the convenience of the court, that the testimony be taken by some disinterested person to be appointed by the court for that purpose.

We pray, however, that the person so appointed be directed to take the testimony at Chattanooga, where all the witnesses on both sides reside. If it should be found that any reside elsewhere we consent to taking their testimony wherever desired.

I am informed and believe, and so state to the court, that the defendants are almost without exception unable to bear the expense of traveling to Washington and remaining there during the hearing, as they would have to do or submit to a practical denial of justice. To compel them to attend a hearing away from home would be in itself a severe punishment, and trial should precede punishment. The analogies of the Constitution and the laws, too, make the place where the offense is charged to have been committed the appropriate one for the taking of the proof. As the sheriff and all his deputies are parties, their absence from their homes would also work harm to the course of business in the courts and to the preservation of the peace of their county.

Respectfully submitted,

JUDSON HARMON,
For Joseph F. Shipp and Others.

CLIFT & COOKE,
ROBERT PRITCHARD,
Of Counsel.